

Agreement Synopsis, Context and Review

Sector:	Water
Name of Agreement:	State Security Deed
Type of Agreement:	Deed
Year of Agreement/ Draft:	2009
Principal Author(s) Reviewed by:	Law firm of Corrs Chambers Westgarth Victoria Rigby Delmon, LEGPS, World Bank; Luiz Alcoforado, LEGPS, World Bank
Purpose and Context:	This Security Deed sets out the terms on which each Chargor (the Project Co, the Finance Co. and the Finance No. 2 Co) grants a first ranking fixed and floating charge to the State over its entire assets and undertakings as security for the performance of the Chargors' obligations under each project document.
Drafted for common law/ civil law jurisdiction:	Common Law
Main Features:	<p>This State Security Deed was drafted by the law firm of Corrs Chambers Westgarth to be entered by and between the State (Minister for Water of the State of Victoria); the Project Co. (AquaSure Pty Ltd); the Finance Co. (AquaSure Finance Pty Ltd); and the Finance Co. No. 2 (AquaSure Finance No. 2 Pty Ltd). The Governing Law is that applicable in the State of Victoria.</p> <ul style="list-style-type: none">• Each Chargor charges to the State all of that Chargor's assets, undertakings and rights, both present and future held by it in any capacity (the "Charged Property") to secure the due and punctual performance, observance and fulfillment of the Obligations and the due and punctual payment in full to the State of all the Secured Money (clause 4.1)• The Charge will operate as a fixed charge over all of the Charged Property listed in this clause, which includes all real property, all capital, all machinery, all contracts and rights, all security interests, all IP rights, etc. (clause 4.2)• The Charge will be floating on the remainder of the Charged Property and over any of the Charged Property which is not subject to an effective fixed Charge (clause 4.3)• The Charge is a first ranking security and takes priority over all other security interests given by each Chargor (clause 4.4)• In an Event of Crystallization¹, the floating charge will "crystallize" and immediately become a fixed charge over that part of the Charged Property not subject of the fixed charge immediately prior to that occurrence (clause 4.6)

¹ Defined in clause 1.2 as any breach of clause 7.1; the State taking any step to enforce the Charge after it is entitled to do so; any security interest over any charged property becoming enforceable; the Charge becoming fixed over any Charged Property by Law, among others (clause 1.2).

- If a circumstance which entitles the State to appoint a Receiver under this Deed subsists, the State may demand the immediate payment of the Secured Money and exercise any power (clause 8)
- The State may appoint any person to be the Receiver of the whole or part of the Charged Property (9.1) and may withdraw the appointment of the Receiver (9.2)
- Receiver's express powers in relation to the Charged Property include: to take possession, convert the charged property to money, lease, carry on business, employ, conduct works, sell the charged property etc. (clause 10)
- The State may, without notice and whether or not a Receiver has been appointed, exercise all or any of the powers conferred on a Receiver or which would be conferred on a Receiver if appointed, as if those powers had been expressly conferred on the State (clause 11)
- All money received by the State or by the Receiver as a result of the exercise of the powers may be applied in the payment of: fees, costs, any other outgoings as the State/Receiver sees fits, the Secured Money then due, subsequent Security Interests, and in payment to the Project Co, among others (clause 13.1)
- Each Chargor waives in favor of the State any rights against the State as needed to give effect to this deed (clause 15)
- Goods and Services Tax provisions (clause 17)
- Unless the Project Deed is extended, this Deed terminates on the latest of: (i) performance and satisfaction of all of the obligations; (ii) the Expiry Date; or (iii) the date on which all Secured Money has been repaid in full. The termination does not affect the rights of any party which have accrued to that party before the date of termination (clause 18)

Possible additional provisions that it might be appropriate to include:

N/A

Experience Since Coming Into Force (including any amendments)/ if draft form, whether it has been applied:

N/A

Tracking Number:

Ref #: State Security Deed (August, 2009)